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PATENT
Docket No.: 082368-004000US
Client Ref. No.: E1-A0203P-US

TOWNSEND and TOWNSEND and CREW LLP

By: /Megan McCoy/
Megan McCoy

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Yasuko NAKAGAWA et al.

Patent No.: 7,662,270

Issued: November 24, 2009

Application No.: 10/532,264

371(c) filed: December 28, 2005

For: GENE EXPRESSED SPECIFICALLY
IN DOPAMINE-PRODUCING NEURON
PRECURSOR CELLS AFTER
TERMINATION OF DIVISION

Customer No.: 20350

Confirmation No.: 4474

Examiner: KOLKER, Daniel E.

Art Unit: 1649

**REQUEST FOR
RECONSIDERATION OF
PATENT TERM ADJUSTMENT
DETERMINATION
UNDER 37 C.F.R. § 1.705(d)**

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

Pursuant to 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in §1.18(e) and a statement of facts as required under 37 C.F.R. § 1.705(b)(2).

In view of the following it is respectfully requested that Applicants be granted a corrected patent term adjustment of **900 days**.

Statement of Facts as required under 37 C.F.R. § 1.705(b)(2)

The correct patent term adjustment is 900 days, not 319 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) listed on the front page of U.S. Patent No. 7,622,270, issued November 24, 2009.

The period of adjustment under § 1.702(a) is 371 days (“A delay”).

The period of adjustment under § 1.702(b) is 581 days (“B delay”).

The period of adjustment under § 1.704(a) is 52 days (“applicant delay”).

The period of adjustment for overlap is 0 days.

The period of adjustment under § 1.703(f) is 900 days.

The Relevant Dates as Specified in 37 C.F.R. §§ 1.703(a)-(e) , §§ 1.704 and the Adjustment Specified in 37 C.F.R. § 1.703(f)

1. § 1.703(a) as applied to U.S. National Stage Applications under § 371

Applicants do not dispute that the Office did correctly calculate the term adjustments to include the term adjustments that Applicants are entitled to under 37 CFR § 1.703(a) for a U.S. National Stage Application under § 371 as a total of 371 days as shown on the attached **Exhibits A** (Patent Term Adjustment History) and **C** (Applicant PTA Calculation). This period of time began on December 28, 2005 (date § 371(c) requirements satisfied) and ended on March 5, 2008 when a Restriction Requirement was mailed by the Office.

2. § 1.703(b) as applied to U.S. National Stage Applications under § 371

The Office failed to issue a patent within three years of the actual filing date of the above-referenced application. Applicants **do** dispute the Office’s calculation of 0 days of term adjustments that Applicants are entitled to under 37 CFR § 1.703(b) and under § 1.702(b) (see “PTA 36 Months” in **Exhibit A**). Applicants submit that the Office erred in its calculation of the three-year pendency provision under 35 U.S.C. § 154(b)(1)(B) since the Office failed to take into account that the date that determines the three-year provision was the commencement date as defined by 35 U.S.C. § 371(b) and (f).

The present application is the U.S. National Stage entry under 35 U.S.C. § 371 of International Application No. PCT/JP2003/013420, filed October 21, 2003, which claims the benefit of priority of Japanese Application No. 2002-307573, filed October 22, 2002 (*see face* page of U.S. Patent No. 7,622,270 (**Exhibit B**)). Applicants submit that the "actual filing date" of a U.S. national stage application filed under 35 U.S.C. § 371, for purposes of calculating "B Delay" under 35 U.S.C. § 154(b)(1)(B), 37 C.F.R. § 1.702(b) and § 1.703(b), is the date that is 30 months from the priority date of the international application. Therefore, pursuant to the provisions of 35 U.S.C. § 371(b) and (f), the national stage for the present application "commenced" on April 22, 2005, i.e., upon expiration of 30 months from the priority date of the international application and no express request for entry was made under § 371(f).

As a result, the determination of "B Delay" is the period beginning on April 23, 2008 (the day after the date that is three years after April 22, 2005, the date that the national stage commenced), and ending on November 24, 2009 (the date the instant U.S. Patent issued). Applicants submit that the effective period of adjustment as applied under 37 C.F.R. § 1.702(b) is **581 days**. Despite the ruling in the Wyeth court (D.D.C. 2008), the Office has been contending that the term adjustment is the greater of the "A" delay or "B" delay period.

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e).

4. Overlapping periods under § 1.703(a)-(e)

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538, D.D.C. 2008) and affirmed by the Federal Circuit on January 7, 2010 (*Wyeth v. Kappos*, Docket No. 2009-1120, Fed. Cir.). Periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §1.54(b)(1)(B) overlap only if they occur on the same calendar day or days (*see Wyeth v. Dudas* and *Wyeth v. Kappos*). Applicants submit that there are **0 days** of overlap under § 1.703(a)-(e).

5. Reduction of Period of Adjustment of Patent Term Under 37 C.F.R. §1.704

Applicants do not dispute the calculation by the Office of the period of adjustment under § 1.704(a) as total of 52 days indicated by the attached Patent Term Adjustment History and Patentee's own calculation of PTA (*see Exhibits A and C*).

6. § 1.703(f)

The period of adjustment under 37 C.F.R. § 1.702(f) is as follows:

Type "A" delay:	371 days
Type "B" delay:	581 days
"A" and "B" overlap:	0 days
Applicant delay	52 days
<u>Adjusted</u>	<u>900 days</u>

Terminal disclaimer

The instant application is not subject to a terminal disclaimer.

PATENT TERM ADJUSTMENT DETERMINATION

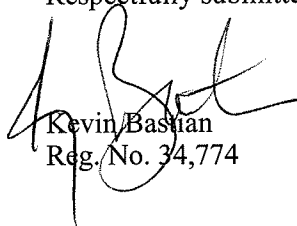
Pursuant to *Wyeth v. Kappos* and *Wyeth v. Dudas* (Fed. Cir., Docket No. 2009-1120, January 7, 2010, and 88 U.S.P.Q.2d 1538, D.D.C. 2008) and the provisions regarding § 371 applications, Applicants are entitled to 900 days of patent term adjustment, *i.e.*:

[952 days (A delay + B delay) minus 0 overlap days] minus [52 days (applicant delay)].

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

Please charge the fee set forth in 37 C.F.R. §1.18(e) (\$200.00) to Deposit Order Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to our Deposit Order Account No. 20-1430..

Respectfully submitted,



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